IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.154 OF 2006

1.Husensaheb Aminsaheb Bagwan
(since deceased through L.Rs.)
1a. Smt.Noorbi Husenso Bagwan & Ors. ...Appellants
vs.
1.Akkubai Sitaram Mali
(since deceased through L.Rs.)
1a.Balkrishna Dhondiba Mali & Ors. ...Respondents

Mr.T.S.Ingale for the Appellants
Mr.P.M.Arjunwadkar for the Respondent Nos.1a to 1d, 2 to 5.

CORAM: A.S.OKA,J.
DATE : JULY 18, 2007.

P.C.:

1. Heard Shri Ingale for the Appellants. The appellants are the legal representatives of the original Defendant No.5. The Respondent Nos.1/a to 1/d are the legal representative of the original Plaintiff and the Respondent Nos.2 to 5 are original Defendant Nos.1 to 4.

2. According to the case of the original Plaintiff Akkubai, she was the owner of the suit property. During the pendency of the suit the original plaintiff expired and Respondent Nos.1a to 1d were brought on record as the legal representatives of the deceased Plaintiff on the basis of the registered deed of will executed on 9th December 1982 by deceased Akkubai. According to the case of the Plaintiff, the original defendant Nos.1 to 4 executed sale deeds in favour of the defendant No.5 (Appellants) on 18th July 1973, 10th June 1974 and 24th September 1974 and the said sale deeds were not binding on the plaintiff. The suit was defended by the

Appellants (original defendant No.5) by raising various contentions including the contention of bar of limitation. In the alternative, it was submitted that the predecessors of the Appellants viz. defendant Nos.1 to 4 had perfected their title by adverse possession.

3. The trial court dismissed the suit. The trial court however held that the original plaintiff had proved her title. The trial court negatived the plea of the appellants that their predecessor i.e the original defendant no.5 was a bonafide purchaser for value without notice of the rights of the original plaintiff. Even the plea of adverse possession was negatived by the trial court. However, the trial court found that the suit was barred by limitation as the same was not filed within a period of 12 years from the date of dispossession of the original Plaintiff. In an Appeal preferred by the Respondent Nos.1a to 1b, the District Court has interfered and has passed a decree for possession.

4. The first submission of the learned Counsel for the Appellants is that the suit filed by the original Plaintiff was governed by Article 64 of the Limitation Act,1963. He submitted that going by the averments made in the plaint, the suit was essentially filed on the basis of the prior possession up to the year 1967 and the subsequent dispossession by the defendants. He placed reliance on the decision of the Apex Court in case of Ramiah vs. N.Narayana

Reddy (dead) by L.Rs. [(2004) 7 S.C.C. page 541] and submitted that by skillful pleadings, the plaintiff has made an effort to avoid the applicability of an inconvenient Article viz. Article 64 of the said Act of 1963.

5. In the alternative it is submitted that the plea of adverse possession was established by the Appellants as admittedly the original Plaintiff was out of possession from the year 1967. He submitted that the revenue record and the city survey record show that the predecessor of the Appellants was openly in possession from the year 1967.

6. I have considered the submissions. Perusal of the plaint clearly shows that the suit is based on title. In fact, in paragraphs 2 to 5 of the plaint, the original plaintiff has set out her title. The original plaintiff has also claimed declaration that the sale deeds executed by the defendant Nos.1 to 4 were not binding on her. By an amendment to the plaint, the legal representatives of the original Plaintiff contended that they have become owners by virtue of the will executed by the original plaintiff. It is alleged that till the year 1971, the original plaintiff was in possession.

7. Going by the averments made in the plaint, it is obvious that the suit is based on title. Article 64 of the said Act of 1963 will apply only when the suit for possession of an immovable property is based on previous possession and not on

title. The decision of the Apex Court relied upon by the learned counsel for the Appellants will not apply to the facts of the present case. On plain reading of the plaint, the suit is filed on the basis of the title and therefore, the same will be governed by Article 65 of the said Act of 1963.

8. In view of the Article 65 of the said Act of 1963, the period of limitation is 12 years from the date on which the possession of defendants become adverse to the plaintiff. It must be noted here that the decree for possession has been passed against the Appellants (the L.Rs. original defendant No.5). The defendant No.5 purchased the suit property in the year 1974 from the defendant Nos.1 to 4. The said predecessors in title of the original defendant No.5 did not step into the witness box. In paragraph 9 of the written statement of the defendant No.5 it is stated that he was in possession from the year 1967 as a tenant and after the execution of the sale deeds in the year 1973-74 he became owner of the suit property. So even according to the case of the original defendant No.5, he has entered the suit property in the year 1967 as a tenant. He claims title on the basis of the documents from the year 1973-74. The suit is filed in the year 1981. Even according to the defendant No.5, his entry in the property in the year 1967 is lawful. Hence, there is no merit in the plea of adverse possession.

9. No substantial question of law arises. Second Appeal is

dismissed with no order as to costs.

JUDGE